

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

- - - - -X
CHARTER COMMUNICATIONS, INC.,
Plaintiff

20-CV-915 (GWC)

vs.

LYNDA M. DERFERT,
Defendant.

Rochester, New York
July 29, 2020
11:11 a.m.

- - - - -X

TRANSCRIPT OF VIDEO PROCEEDINGS
BEFORE THE HONORABLE GEOFFREY W. CRAWFORD
UNITED STATES CHIEF DISTRICT JUDGE (VT)

MORGAN LEWIS & BOCKIUS, LLP
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Appearing on behalf of the Plaintiff

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ALSO PRESENT: Erin Sobkowski, NYS Division of Human Rights

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(Proceedings recorded by electronic sound recording,
transcript produced by computer).

P R O C E E D I N G S

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THE CLERK: This is the case of
Charter Communications vs. Lynda M. Derfert, 20-CV-915.

And the appearances are Lynda Derfert, Kimberly
Lunetta, Erin Sobkowski, and the others are just listening.

THE COURT: All right.

THE CLERK: All right.

THE COURT: Thank you. We'll get right to it. Who
is appearing for Charter Communications?

MS. LUNETTA: I am, Your Honor, Kimberly Lunetta
from Morgan Lewis.

THE COURT: Kimberly, I'm sorry, your last name?

MS. LUNETTA: Lunetta, L-U-N-E-T-T-A.

THE COURT: In place for Mr. Shaulson?

MS. LUNETTA: Well, yes, in place of Mr. Shaulson.

THE COURT: Well, I mean only because he signed
the --

MS. LUNETTA: Yeah, yes, he will not be appearing.

THE COURT: All right. And who do I have for Lynda
Derfert? Anybody for the respondent?

MS. LUNETTA: She is pro se, Your Honor.

THE CLERK: Lynda Derfert is here.

THE COURT: Sorry?

MS. LUNETTA: She's pro se, Your Honor.

1 **THE COURT:** She's pro se. And do I see her there?
2 No.

3 **MS. DERFERT:** Yes, Lynda Derfert is here.

4 **THE COURT:** I can't see your face. Do you want to
5 raise your hand?

6 **MS. LUNETTA:** You might have to click your arrow to
7 see more people.

8 **THE COURT:** Let's see, what have I done now?

9 **MS. SOBKOWSKI:** There's an option for gallery view.

10 **MS. DERFERT:** Four people, now I see three.

11 **MS. LUNETTA:** Now we see you.

12 **THE COURT:** Oh, I've got one, two, three, four,
13 five -- all right, well, I'm sure you're there, Ms. Derfert, I
14 just can't open this up to -- oh, here, look at that. I'll be
15 able to hear you in any event.

16 **MS. DERFERT:** I am here.

17 **THE COURT:** And, Ms. Sobkowski, who are you in for?

18 **MS. SOBKOWSKI:** The New York State Division of Human
19 Rights.

20 **THE COURT:** Excellent. Are you on staff with them
21 or through the A.G.'s Office?

22 **MS. SOBKOWSKI:** On staff.

23 **THE COURT:** Yeah, great. Are those the three
24 parties then?

25 **MS. LUNETTA:** Your Honor, the Division is not a

1 party.

2 **THE COURT:** Right, right, but we'll allow you to
3 participate, but those are the three entities. Anybody else
4 planning to take part today?

5 **MS. LUNETTA:** No.

6 **THE COURT:** No? Good. My only goal today was to --
7 was two things. One to sort of arrange for briefing so that
8 we can decide this together in a sensible way hearing from
9 everybody, and also to make sure that we had enough time so
10 that the human rights proceeding wouldn't kind of just begin
11 and the Court and the Division be sort of at odds with each
12 other.

13 Ms. Sobkowski, do we have enough time to kind of
14 get this done in a sensible way, or are you about to have a
15 hearing? I couldn't quite tell.

16 **MS. SOBKOWSKI:** No. The only thing that's been
17 scheduled is a preliminary conference and that's on for
18 August 4th. There's been no public hearing scheduled.

19 **THE COURT:** Oh, okay. So from the Agency's
20 perspective, you'd be glad to wait -- I don't mean years, but
21 wait a couple of weeks so that we can brief this and decide it
22 and get it figured out before you reach the merits?

23 **MS. SOBKOWSKI:** Yes.

24 **THE COURT:** Yeah. And --

25 **THE CLERK:** Judge, we lost Ms. Derfert.

1 **THE COURT:** Oh, no.

2 **THE CLERK:** She fell off the screen. So she's
3 gonna have to reconnect.

4 **THE COURT:** All right, I'm glad to wait.

5 **THE CLERK:** So sorry.

6 **THE COURT:** It happens. Can you send her a text or
7 something? Does she know that she's MIA?

8 **THE CLERK:** I assume she knows she's MIA. Let me
9 give her a call.

10 **THE COURT:** It's fun seeing everybody's home. It's
11 my favorite thing about Zoom. I haven't --

12 **MS. LUNETTA:** Are you in the office?

13 **THE COURT:** Yeah, a little boring. But usually I
14 get to see people's houses like yours and -- I haven't seen
15 like anyone's cat or child walk by, but --

16 **MS. LUNETTA:** I have a dog.

17 **THE COURT:** There you go....oh, look, right there
18 with you, yeah.

19 **MS. LUNETTA:** She's my paralegal.

20 **MS. SOBKOWSKI:** I sent my children away for the
21 morning so...

22 **MS. LUNETTA:** Good call, Erin.

23 **MS. SOBKOWSKI:** Yeah, they're off with their aunt.

24 **MS. LUNETTA:** Your Honor, I'm happy to repeat this
25 when Ms. Derfert gets back on, but would you mind just hearing

1 me on the issue of the Division's involvement before we hang
2 up?

3 **THE COURT:** Sure.

4 **MS. LUNETTA:** Thank you.

5 **THE CLERK:** Judge, I just wanted to give you an
6 update. Ms. Derfert is gonna call in because she's having
7 connection problems.

8 **THE COURT:** Okay, she's gonna call in on the phone?

9 **THE CLERK:** Yeah, so she's gonna call in on the
10 conference instead of go by video.

11 **THE COURT:** All right. Ms. Sobkowski, why don't you
12 give her a minute, she'll call in in a second.

13 **THE CLERK:** Yeah, she'll call in.

14 **THE COURT:** Yeah, Ms. Sobkowski, we've all been
15 coming in for a while because it just is too hard to manage
16 the criminal side of the docket from your living room. You
17 know, it's just -- because most people have to be seen one way
18 or the other and some appear by video, but some don't and --
19 the civil cases, I don't think I've seen a civil lawyer in
20 court since March; they're all working from home.

21 **MS. LUNETTA:** I've rarely left my house.

22 **THE COURT:** Yeah, yeah, there's just really no need
23 for it.

24 **MS. LUNETTA:** All the downstate courts are still
25 mostly remote, except for criminal.

1 **THE COURT:** Right. Yeah, that's kind of what brings
2 us in.

3 **MS. DERFERT:** Hello? Hello?

4 **THE CLERK:** Hello, this is Ms. Derfert on the line.

5 **THE COURT:** Oh, good, Ms. Derfert, welcome back.

6 **MS. DERFERT:** Hi.

7 **THE COURT:** We've just been chitchatting about dogs
8 and coming into the office.

9 **MS. DERFERT:** Oh.

10 **THE COURT:** Nothing to do with the case. Glad to
11 have you back.

12 **MS. DERFERT:** Talking about dogs and I'm having
13 trouble getting connected with you.

14 **THE COURT:** Yeah. So here you are.

15 **MS. DERFERT:** I apologize, I apologize. I've never
16 used a computer or video thing ever in my life, so I do
17 apologize. I'm sorry. I never use a computer so...

18 **THE COURT:** It's totally fine.

19 **MS. DERFERT:** Thank you.

20 **THE COURT:** All right. What we thought we'd start
21 with is Attorney Sobkowski from the New York City Division of
22 Human Rights wants to explain her agency's role in the case.
23 Glad to hear from you.

24 **MS. DERFERT:** Okay.

25 **MS. SOBKOWSKI:** Okay, do you want me to proceed? I

1 know --

2 **THE COURT:** Please.

3 **MS. SOBKOWSKI:** Okay. So the Division is not a
4 party to this matter. We intend on filing a motion to
5 intervene in this. Ms. Derfert has apprised us of this
6 litigation. We don't really take a position as to the
7 parties' motion to compel arbitration, but we do have concerns
8 about the position that Charter Communication is taking with
9 regard to requesting that this Court order Ms. Derfert to
10 withdraw her complaint and to be enjoined from further
11 proceeding in the Division's proceedings.

12 **THE COURT:** All right. So could I look to you for
13 briefing and -- and a position contrary to Charter's on the
14 question of arbitrability? You'll take the -- you'll defend
15 the position that Ms. Derfert is permitted by law to go
16 forward before your -- before the Human Rights Division?

17 **MS. SOBKOWSKI:** That's correct. We don't take a
18 position as to arbitrability of the matter. You know, that --
19 it's just -- we're not a party to the arbitration.

20 **THE COURT:** Yeah.

21 **MS. SOBKOWSKI:** So I don't really have any, you
22 know, specific -- we don't really have any specific position
23 on that. It's not our area of expertise.

24 But we do argue that there's Supreme Court
25 precedent that an individual, regardless of an arbitration

1 agreement in place between her and her employer or here in
2 this case potential employer, is still free to pursue their
3 complaints, their discrimination complaints in an
4 administrative agency.

5 **THE COURT:** Okay. Kind of like somebody pursuing a
6 claim for Worker's Compensation benefits?

7 **MS. SOBKOWSKI:** Yes. Although, you know, in this
8 case -- right, you know, we consider these separate, but
9 parallel tracks.

10 **THE COURT:** Yeah, okay.

11 **MS. LUNETTA:** Your Honor, may I respond?

12 **THE COURT:** Yeah, but let me just set up kind of a
13 plan. What would be a reasonable deadline, Ms. Sobkowski, for
14 you to file a motion to intervene and, more importantly, get
15 your briefing in on that issue?

16 **MS. SOBKOWSKI:** Two weeks.

17 **THE COURT:** Yeah, all right. And from Charter we
18 have Ms. Lunetta. How do you see it?

19 **MS. LUNETTA:** Well, as far as briefing goes, if I
20 could have two weeks to respond, that would be great.

21 But before I argue something that I'm already
22 winning, are you -- is Your Honor inclined to grant the TRO at
23 this point while we brief?

24 **THE COURT:** Yeah, I think that's fair. Do you --
25 what they're asking for, Ms. Derfert, is that we hold

1 everything still. I don't know that we really need to go so
2 far as a TRO.

3 Can we just reach an agreement that there will be
4 no further proceedings in the -- in front of the Human Rights
5 Division until the Court issues a ruling on the petition to
6 compel arbitration?

7 **MS. LUNETTA:** Well, Your Honor, I would prefer that
8 you hear me on the TRO because I think there's -- we meet all
9 of the requirements easily for a TRO here, and the point that
10 I'll make in a moment when you allow me is that this issue is
11 really between Ms. Derfert and Charter and it has nothing to
12 do with the Division.

13 So if -- if -- if the Court is going to order
14 briefing from the Division, that's of course fine obviously,
15 but if you -- I would still ask for a TRO enjoining
16 Ms. Derfert from proceeding in the Division in the meantime.

17 **THE COURT:** Ms. Derfert, any objection to that? You
18 probably don't know what we're talking about.

19 **MS. DERFERT:** Not really. I mean, I'm hearing drop
20 proceedings or not and I -- I don't really understand because
21 that's why I'm on this call, I think. I don't want to -- I
22 don't think I was wrong, so that's all I know. So I don't
23 know what -- I know -- if you want to hold this, what we're
24 doing right now off for a period of time?

25 **THE COURT:** That's correct. What you're doing

1 before the Human Rights Division, Charter is asking that you
2 hold -- that the Court order that you wait to go forward in
3 that hearing --

4 **MS. DERFERT:** -- until we go further with this one?

5 **THE COURT:** Exactly.

6 **MS. DERFERT:** Okay, okay. As long as nothing is
7 said and done in this conversation then I, you know, will work
8 and wait. I mean, I -- because our next thing I think is
9 August 4th. So we're just -- what you're asking is just to
10 hold off August 4th until we get done with this? We complete
11 this --

12 **THE COURT:** Yeah.

13 **MS. DERFERT:** -- solution?

14 **THE COURT:** Exactly.

15 **MS. DERFERT:** Correct?

16 **THE COURT:** Yes.

17 **MS. DERFERT:** Yes, I agree with that.

18 **THE COURT:** Okay. I think that's fair as well. You
19 know, it's sort of a tricky issue. I don't want to get it
20 wrong. It's going to take some time to figure it out.

21 I'll issue the TRO with the agreement of the
22 parties. It means nothing more than that we'll take some time
23 and wait to hear from the Human Rights Division attorney and
24 from the Charter attorney over the course of the next month
25 before the human rights case moves forward.

1 Ms. Sobkowski --

2 **MS. SOBKOWSKI:** Your Honor --

3 **THE COURT:** Yes.

4 **MS. SOBKOWSKI:** -- sure, I just wanted to interject
5 that the thing that's scheduled for August 4th is just a
6 preliminary conference. So, you know, not unlike what we're
7 doing today.

8 **MS. DERFERT:** Okay.

9 **MS. SOBKOWSKI:** And there has been no hearing
10 scheduled and so, you know, the Division has an interest I
11 think in getting all the information on the table just as you
12 do here today and having the parties come and get on that
13 telephone conference with the ALJ who has been assigned to the
14 preliminary conference.

15 So, you know, in that respect we do request that
16 that meeting be allowed to proceed.

17 **MS. DERFERT:** Oh, okay.

18 **MS. LUNETTA:** Your Honor, Charter objects to that.

19 **MS. DERFERT:** Oh.

20 **THE COURT:** Well, here's the problem, Ms. Sobkowski.
21 These things sort of take on a life of their own and I don't
22 know if that ALJ will be as reasonable as you -- I'm sure he
23 or she will be, but if somebody gets their back up and insists
24 on their right to hold an administrative hearing pronto, then
25 we're all kind of in a yank and I don't think we've really

1 accomplished very much when Ms. Derfert and Charter agree that
2 postponing things for a month so that the Court can hear from
3 everybody is sensible.

4 I'm just always a little nervous about having two
5 tribunals hearing the same case at the same time because I've
6 never seen it work well.

7 **MS. SOBKOWSKI:** Okay, that's -- I mean, that's fine.
8 Just -- just -- I would just note that, you know, we're not a
9 party here, so obviously the TRO wouldn't be issued on our
10 consent anyway I guess. So that's fine.

11 **THE COURT:** And you just make a note that the fact
12 that Ms. Derfert doesn't show up on the phone for her
13 August 4th hearing doesn't mean she's abandoning her case.

14 **MS. SOBKOWSKI:** Absolutely.

15 **THE COURT:** It just means she's following the rules
16 here and -- and deferring the administrative proceeding until
17 the Court has a chance to rule.

18 **MS. SOBKOWSKI:** Fair enough.

19 **THE COURT:** So, Ms. Derfert, you don't lose -- they
20 aren't going to think that you're walking away from your
21 administrative hearing. Ms. Sobkowski will put some kind of
22 entry in the docket saying that you and Charter have agreed to
23 postpone further proceedings in the -- before the
24 administrative body, you know, until -- until I can hear from
25 you both.

1 **MS. DERFERT:** Okay.

2 **THE COURT:** So any objection to the motion to
3 intervene from Charter?

4 **MS. LUNETTA:** Yes, absolutely. Certainly not if
5 Your Honor wants to hear from the Division, we'll respond.

6 But this has already been decided by the Supreme
7 Court. I'm sorry, Ms. Sobkowski was referring I'm sure to the
8 Supreme Court case *EEOC vs. Waffle House*. In that case,
9 though, this is the -- the Supreme Court then distinguished
10 the facts here from that case. In *Waffle House* the EEOC was
11 bringing a claim against an employer on its own behalf,
12 exercising its enforcement power to bring an action against
13 the company.

14 There, of course, and we don't disagree with this,
15 our arbitration agreement specifically says that she can file
16 a charge, but that any hearing on the merits would have to be
17 arbitrated.

18 And so the Supreme Court actually dealt with this
19 exact issue in *Preston vs. Ferrer*; Justice Ginsberg actually
20 wrote that opinion and the Court cited numerous cases ordering
21 arbitration of claims under laws enforced by the EEOC, and the
22 Court distinguished in that case the fact s we have here where
23 it's an adjudication on the merits; it's not an enforcement
24 action by the Division.

25 We certainly don't dispute -- we hope they don't,

1 but we certainly don't dispute the Division's right to bring a
2 claim against an employer for, you know, violating the New
3 York State Human Rights Law.

4 Here, though, they're not -- they would not be
5 acting in their prosecutorial function. They would be acting
6 as an adjudicator with the ALJ actually making a decision on
7 the merits of this claim. That part Ms. Derfert already
8 agreed to arbitrate.

9 And Your Honor, you mentioned Worker's Comp and I
10 believe you specifically said Worker's Comp for benefits, and
11 certainly Worker's Comp Board has exclusive jurisdiction over
12 Worker's Comp benefits.

13 But we recently succeeded in obtaining a permanent
14 injunction against an employee who sought to pursue a Worker's
15 Comp retaliation claim through the Board. That itself was not
16 in the exclusive jurisdiction of the -- of the Board because
17 it was not for benefits. And Judge Koeltl in the Southern
18 District of New York granted that permanent injunction in that
19 case. We cited it in our papers, it's *Prowse vs. UBS*.

20 So as far as from Charter's point of view, the
21 motion to intervene and all of the subsequent briefing is
22 unnecessary and, you know, an unnecessary use of resources
23 when this has already been decided by the Supreme Court.

24 So I would -- I would ask Your Honor to consider
25 taking a different tact, perhaps making them file a motion or

1 a preliminary letter or something that might reduce the costs
2 if -- if we can, maybe a pre-motion conference, because to
3 fully brief this issue that's already been decided by the
4 Supreme Court seems unnecessary.

5 **THE COURT:** But haven't you made a pretty good case
6 that this is a nuanced and complex area of the law that is
7 going to take some time to figure out? And I strongly suspect
8 that Ms. Derfert, as a pro se individual, is not going to be
9 equipped to -- to brief this. I haven't met her, but she
10 doesn't use a computer and is, you know, not an attorney.

11 How else am I going to hear both sides of the case?

12 **MS. LUNETTA:** So, Your Honor, the Division doesn't
13 represent Ms. Derfert in this motion to compel. And I will
14 say just to make clear for Ms. Derfert, we're not asking her
15 to drop her claims and not pursue them.

16 All we're -- all we're asking her to do is -- is
17 dismiss her claim -- or have the Court enjoin her from
18 pursuing this at the Division level and she file the demand
19 for arbitration, which all of the costs except for the filing
20 fee, which as Your Honor knows is, you know, permissible.
21 Other than the filing fee, Charter picks up all of the fees
22 for arbitration.

23 And so all we're asking her to do -- we're ready to
24 litigate it immediately in arbitration. We're not looking to
25 delay her -- her pursuit of justice on her claims, right?

1 All we want her to do is pursue it in arbitration
2 at triple A and we would help her with that filing process.
3 So we're not asking her to -- to dismiss everything; we're
4 just asking her to pursue it in a different forum in case that
5 wasn't clear to her from our papers, and I understand most of
6 our papers are not, you know, crystal clear to non-lawyers.

7 I don't think that the -- that the issues are at
8 all ambiguous or nuanced. This is very clear. It's -- if it
9 were the New York State Division that was pursuing a claim
10 against Charter, I wouldn't be here. I wouldn't be moving to
11 compel or enjoin the State Division from doing that.

12 Here all we're asking is that Ms. Derfert follow
13 the agreement that she made with Charter and instead of
14 pursuing her claims at the Division, pursue them in an
15 arbitration before a neutral arbitrator.

16 **THE COURT:** All right. Ms. Derfert, I give you a
17 turn. Anything that you wanted to add on this issue? And
18 then I'll ask Ms. Sobkowski and then we'll sort of look for a
19 close.

20 **MS. DERFERT:** Okay. So in other words, you're like
21 looking to take care of this through the arbitration court and
22 not through the Division of Human Rights is what you're
23 asking?

24 **THE COURT:** That's what they're asking, correct.

25 **MS. DERFERT:** Okay. Well, I got -- just received,

1 like, three reams of paper only like six or seven days ago.
2 So I -- I'm -- if we're -- as long as -- see, I'm not sure.
3 This is just -- I -- too much. A week ago they said okay,
4 here this is, arbitration, I didn't even know what half of it
5 meant.

6 So I'm trying to sift through some of these papers
7 to even understand, but I do understand what she's saying and
8 at this very moment I -- I don't know because I don't know the
9 two different options, you know.

10 I mean, I'm just looking to settle this thing.
11 It's been a long time, so I don't know what to say at this
12 moment. I'm very nervous, scared because, like I say, I don't
13 know a bunch of legal stuff and -- I don't know. I just don't
14 want to feel this -- how many years have been a waste of time
15 to just say a yes or no right now.

16 I don't know what's in my best interest. I'm
17 confused. If I could read some of these papers here to see
18 what I signed about the arbitration and that, you know, and
19 then I'll at least know what's going on.

20 It was just too fast. Everything -- people came
21 two days, three days in a row with papers, papers, papers,
22 papers. I was like oh, my goodness.

23 **THE COURT:** It's hard. There's no pressure on you
24 to make a decision on the phone or to do anything today.

25 I have now by video met Ms. Lunetta. I can tell

1 you that she is a very professional person. That if you pick
2 up the phone she will treat you with courtesy. She may not
3 agree with you, but she is going to be super polite and
4 professional --

5 **MS. DERFERT:** Right.

6 **THE COURT:** -- with you if you have questions that
7 she can answer or you want to talk about the case directly
8 with her.

9 Ms. Lunetta, are you guys in contact? Does she
10 know how to find you?

11 **MS. LUNETTA:** We have not been in contact directly
12 except by letter, but I'm happy to send her -- now that I have
13 her e-mail address, I will send her an e-mail with my cell
14 phone number and all my direct contact information.

15 **THE COURT:** Yeah.

16 **MS. LUNETTA:** I would just like to say so that she
17 has this in her mind, the -- she also has all of the same
18 remedies available. So the arbitration process doesn't
19 deprive her of any of the remedies that she would have before
20 the Division or in court.

21 So I just want to make that clear to her because,
22 you know, just so she has that to think about before we speak.
23 But I'm happy to speak with her.

24 **THE COURT:** Okay. And the --

25 **MS. LUNETTA:** -- and, Your Honor, quickly -- quickly

1 on the intervene -- on the intervention issue.

2 **THE COURT:** Hang on. Let me finish up with
3 Ms. Derfert and then give you a chance.

4 **MS. LUNETTA:** Sure, no problem.

5 **THE COURT:** The other option you always have,
6 Ms. Derfert, is you can always speak to an attorney. You can
7 probably with some looking around find somebody that
8 specializes in employment law, employment troubles. You can
9 find somebody that specializes in representing employees and
10 that's -- he or she may be able to answer questions for you.
11 I always urge people to do it.

12 **MS. DERFERT:** Right.

13 **THE COURT:** There are lawyers out there that
14 specialize in work like this and can give you some guidance,
15 maybe represent you, maybe not, but that's an option you
16 should think about.

17 **MS. DERFERT:** It was only two days ago that I knew
18 about today. So I was, like, I couldn't even -- wouldn't even
19 think to call anybody. I didn't know who to call. But, yes,
20 I understand and I would appreciate if I could get her, you
21 know, she could send me the e-mail and stuff so...

22 **THE COURT:** Yeah, so --

23 **MS. LUNETTA:** I'll do it right after this.

24 **THE COURT:** All right.

25 **MS. DERFERT:** Okay.

1 **THE COURT:** Ms. Sobkowski, anything further on the
2 view of intervention?

3 **MS. SOBKOWSKI:** Yes. The Division, you know, the
4 Division is an enforcement agency and regardless of the pro
5 arbitration goals under the FAA, Ms. Derfert has the right and
6 the Division of Human Rights has the right to proceed with her
7 claim at -- at the -- at an administrative forum.

8 And contrary to Charter's position, the human
9 rights -- the Division of Human Rights sits in a very similar
10 position to the EEOC, and New York courts have held that we
11 are here to vindicate the public interest and that we have
12 been charged with enforcement -- investigation and enforcement
13 of the Human Rights Law.

14 And this is the Division complaint so, you know,
15 Ms. Derfert's -- the allegations in the complaint, the caption
16 here is Lynda Derfert. The human -- the State Division of
17 Human Rights on the complaint of Lynda Derfert, we are in
18 charge of this complaint, we are enforcing the Human Rights
19 Law and it's our position that under Supreme Court, *EEOC*
20 *vs. Waffle House and Gilmer*, that we have the right to proceed
21 here, the right to investigate, the right to enforce this --
22 these allegations of discrimination in New York State.

23 And that Mrs. Derfert can go forward with
24 arbitration and she can go forward with her complaint at the
25 Division of Human Rights.

1 **THE COURT:** I don't really understand how that would
2 work. Would you -- if she were (talking at the same time) --

3 **MS. SOBKOWSKI:** -- (talking at the same time).

4 **THE COURT:** -- two overlapping awards or what would
5 happen?

6 **MS. SOBKOWSKI:** No. They can proceed parallel.
7 They're separate and parallel and that, you know, whoever goes
8 first, you know, there may be some collateral estoppel issues,
9 but the Division is free and the -- to vindicate the public
10 interest and to seek individual damages and damages on behalf
11 of New York State to vindicate the public interest.

12 **THE COURT:** All right. Well, sometimes we see
13 ordinary negligence claims proceeding in state and federal
14 court at the same time. It's not desirable, but it's not
15 prohibited either.

16 So it would be a bit like that from your
17 perspective?

18 **MS. SOBKOWSKI:** Yes. They can proceed on, you know,
19 separate but parallel tracks. One doesn't necessarily have to
20 precede the other.

21 **THE COURT:** All right. And likely whichever one got
22 done first would -- would establish *res judicata*?

23 **MS. SOBKOWSKI:** Correct.

24 **THE COURT:** Yeah, all right. Would it be within your
25 bailiwick to speak with Ms. Derfert if she were to call you?

1 I don't know what your responsibilities are.

2 **MS. SOBKOWSKI:** Yes. In fact, she's been assigned a
3 Division attorney that she's been working with --

4 **THE COURT:** Oh, okay.

5 **MS. SOBKOWSKI:** -- who will be (indiscernible audio)
6 the case. So she can reach out to Neil Zions.

7 **THE COURT:** Perfect.

8 **MS. DERFERT:** Yes.

9 **THE COURT:** Perfect. So you've got plenty of people
10 to talk to, Ms. Derfert. And, again, I promise you that they
11 will all be super polite and you don't have a reason to be
12 fearful about calling them that somebody will be mad at you
13 or -- or unprofessional. They'll all treat you well.

14 I'm convinced that I'd like to get briefing from
15 the Human Rights Division on the limited view of their
16 jurisdiction to proceed in the face of the arbitration
17 agreement.

18 So I will permit them to intervene, give you two
19 weeks to -- two weeks is reasonable, Ms. Sobkowski? Is that
20 enough time?

21 **MS. SOBKOWSKI:** Yes, thank you. Yes. So
22 August 15th?

23 **THE COURT:** August 15th, that's a Saturday. So
24 let's say the -- the 17th, which is the Monday. So you've got
25 plenty of time.

1 **MS. SOBKOWSKI:** Okay, perfect.

2 **MS. LUNETTA:** Your Honor, would you mind pushing
3 that -- pushing her deadline out to the 19th and giving me two
4 weeks from that? I'm taking the Florida bar on the 19th.

5 **THE COURT:** Oh, my goodness. Sorry to lose you.
6 All right, August 19th and --

7 **MS. DERFERT:** Good luck.

8 **MS. LUNETTA:** I'm just adding.

9 **THE COURT:** Two weeks from that will take you to
10 September 3. Is that reasonable?

11 **MS. LUNETTA:** That's great, thank you.

12 **THE COURT:** All right. And the -- I'll make a little
13 entry so this is all captured, but the TRO will remain in
14 effect until the Court can rule on the -- on the issue really
15 raised by -- what motion is going to kind of drive this?

16 I mean, we had the petition. Are you going to file
17 a motion, Ms. Sobkowski, or -- I'm trying to think
18 procedurally what am I going to rule on in the end?

19 **MS. SOBKOWSKI:** Initially we were here to file a
20 motion to intervene, but that seems --

21 **THE COURT:** You're welcome in the case, yeah.

22 **MS. SOBKOWSKI:** Okay, thank you, right. So we -- we
23 could make a petition for cross -- let's think.

24 **THE COURT:** Give it some thought. But you give me
25 something I can get my teeth into one way or the other.

1 **MS. SOBKOWSKI:** Right.

2 **THE COURT:** Motion to dismiss or whatever it is.

3 **MS. SOBKOWSKI:** Okay. Sure, but let me think about
4 it. Again, I don't do a lot of federal practice, so I'm going
5 to have to go back and sit down and think about how that would
6 work. Okay, something along the lines of a motion to dismiss
7 the petition?

8 **THE COURT:** Right.

9 **MS. SOBKOWSKI:** Okay.

10 **THE COURT:** Right. It's a straight legal issue.
11 There's no --

12 **MS. SOBKOWSKI:** Yeah, okay.

13 **THE COURT:** And I'll look forward to hearing from
14 both of you. And then this has been so most -- much fun and
15 pleasant, I'll set up a Zoom conference to go over the papers
16 at the end in early September , okay?

17 All right, nice to see you all. Anything more?

18 **MS. LUNETTA:** Thank you, Your Honor, have a good
19 day.

20 **MS. SOBKOWSKI:** Thank you.

21 **MS. DERFERT:** Thank you.

22 (WHEREUPON, proceedings adjourned at 12:19 p.m.)

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CERTIFICATE OF TRANSCRIBER

In accordance with 28, U.S.C., 753(b), I certify that this is a true and correct record of proceedings from the official electronic sound recording of the proceedings in the United States District Court for the Western District of New York before the Honorable Geoffrey W. Crawford on July 29th, 2020.

S/ Christi A. Macri

Christi A. Macri, FAPR-RMR-CRR-CSR(CA/NY)
Official Court Reporter